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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,010	12/04/2000	Thomas R. Jenkins	15916-277	6595

7590 11/10/2009  
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EXAMINER
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NGUYEN, CAMTU TRAN

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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11/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/730,010</p>	<p><b>Applicant(s)</b> JENKINS ET AL.</p>	
	<p><b>Examiner</b> Camtu T. Nguyen</p>	<p><b>Art Unit</b> 3772</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 16,26,30 and 48-51.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 14,15,17,21-23,25,27-29,38,39 and 47.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding the rejections of claims 14, 15, 17, 38, 39, 45, and 46:

Applicant's remarks directed to the Yang et al's Figure 40 are acknowledged, but deemed not persuasive. In particular, it does not disclose a hinge defined by a device that allows one structure to pivot relative to another.

In response, page 4 in the previous Office Action presented the Yang et al device disclosing the hinge device in Figure 40 & 41. Specifically, Figure 41 illustrates elongated body (256) comprising spling leg (254). Figure 41 depicts a portion of the spling leg (254) acts as a hinge allowing a one part of the splie leg (254) to pivot/deflect relative to another part of the spline leg (254), see Figure 41. .

Applicant's remarks directed to Swanson et al's Figure 82 are acknowledged but deemed not persuasive. In particular, it would not produce a "hinge portion".

In response, Figure 82 of the Swanson et al was not relied on for the teaching of the hinge. Instead, the Swanson et al reference was relied on its teaching of the inflatable tissue coagulation body structure. Figure 82 of the Swanson et al presented on page 5 in the previous Office Action was showing the inflatable tissue coagulation body structure (430) relative to the loop (424), specifically, relative to the hinge portion of the Yang/Swanson combination.

Applicant remarks against claim 45 are acknowledge but deemed not persuasive. In particular, the Yang reference does not indicate any difference in the shape/materials of the spline leg (54) and sleeve (256) immediately proximal to & distal of, the purported "hinge portion."

In response, claim 45 does not require any difference in the shape/materials of the spline leg (254). Claim 45 requires the hinge portion has a flexibility greater in the bending direction than the flexibility of the proximal/distal portions immediately thereto. Figure 41 in the Yang reference illustrates the spline/hinge (254) is bending, it is inherent that the portion of the splint/hinge (254) bending would have a greter flexibiliy in the bending direction than the flexibiliy in the proximal/distal portions immediately thereto.

Regarding the rejections of claims 21-23, 25, 27-29:

Applicant's remarks against the combined teachings of Yang/Swanson do not product the claimed invention have been carefully considered but deemed persuasive, in particular, the Yang et al reference does not teach the hinge defined by a portion of the flexible spline which as a flexibility that is greater in the bending direction than the flexibility of the portions of the flexible spline that are immediately proximal/distal thereto.

In response, Figure 41 in the Yang reference illustrates the spline (254) is bending, such bending portion serves as a hinge, it is inherent that hinge portion would have a greter flexibiliy in the bending direction than the flexibiliy in the proximal/distal portions immediately thereto.

At least for the reasons presented above, the Yang/Swanson combination is maintained.

Regarding the specification filed on 10/22/2009, the paragraph replacement has not been entered.